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[Home](#) > Memorandum of Decision Re: Collateral Estoppel Effect of Stay Relief

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Saturday, August 8, 1987

**IN THE UNITED STATES BANKRUPTCY COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

In re

KLAMATH-TRINITY COMMUNITY HOSPITAL, INC.

No. 1-85-00143

[Debtor](#) .

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NATIONAL EMERGENCY SERVICES, INC.,

[Plaintiff](#) ,

v.

A.P. No. 1-87-0079

WILLIAM B. GROVER, [Trustee](#) ,

[Defendant](#) .

\_\_\_\_\_ /

**ORDER DENYING MOTION FOR SUMMARY JUDGMENT**

This action has been brought by plaintiff National Emergency Services, Inc., to determine the validity of its security interest. Prior to the commencement of this action, the bankruptcy court denied National Emergency's motion for relief from the [automatic stay](#) on the grounds that its security interest was defectively perfected. The issue here is whether the doctrine of collateral estoppel prohibits National Emergency from relitigating the issue.

Collateral estoppel can only be used when the issue determined in the prior action was essential to judgment in the prior action. 21 Fed.Proc.L.Ed., sec. 51:212. While the bankruptcy court in the relief from stay motion did specifically find that National Emergency's security interest was invalid, it only needed to find that the validity of the security interest was not sufficiently clear in order to deny the motion. First National Bank of Denver v. Turley (8th Cir.1983) 705 F.2d 1024, 1026. See also In re Millerburg (Bkrtcy.E.D.N.C.1986) 61 B.R. 125, 127, which held that a relief from stay motion should be denied if there is a "high probability" that the security interest is avoidable. Since it was not absolutely necessary for the bankruptcy court to determine that the security interest of National Emergency was invalid in order to deny its motion for relief from the stay, this court cannot give the finding collateral estoppel effect. IT IS THEREFORE ORDERED that the motion for summary judgment is denied.

Dated: August 8, 1987

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ALAN JAROSLOVSKY

U.S. [BANKRUPTCY JUDGE](#)

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